

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

U.S. BANK, National Association,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:21-cv-00120-NAB
)	
MICHAEL QUALIZZA, NEIL D. FREEMAN,)	
TIMOTHY DIXON,)	
)	
Defendants and Counterclaimants,)	
)	
and)	
)	
DFQ MANAGEMENT LLC, and)	
1501 WASHINGTON ST. LOUIS, LLC,)	
)	
Counterclaimants,)	
)	
v.)	
)	
U.S. BANCORP COMMUNITY)	
DEVELOPMENT CORPORATION, and)	
U.S. BANK, NATIONAL ASSOCIATION,)	
)	
Counterclaim Defendants.)	
)	

COUNTERCLAIMANTS MICHAEL QUALIZZA's, NEIL D. FREEMAN's, TIMOTHY DIXON's, DFQ MANAGEMENT LLC's AND 1501 WASHINGTON ST. LOUIS, LLC's MOTION TO COMPEL PRODUCTION AND RESPONSES TO INTERROGATORIES

COMES NOW, Defendants and Counterclaimants Michael Qualizza, Neil D. Freeman, and Timothy Dixon and Counterclaimants DFQ Management LLC and 1501 Washington St. Louis, LLC (collectively "Counterclaimants"), and move for an order compelling U.S. Bank ("the Bank") and U.S. Bancorp Community Development Corporation's ("the CDC") (together "Counterclaim Defendants") to produce (1) financial projection schedules of the CDC's other

state historic tax credit deals closed in Missouri between January 1, 2017, and today, (2) the state tax credit agreements for the same deals, and (3) CDC Executive Director Zachary Boyers' communications naming or discussing Defendant Michael Qualizza, and to (4) answer Counterclaimants' First Interrogatories Seven through Ten and Thirteen through Fifteen, concerning favorable treatment provided to other deals but withheld from Counterclaimants.

These requested documents are readily available with closing documents for the other deals and on the CDC's email servers, they are not privileged, in the past Counterclaim Defendants have failed to assert privilege relative to these documents, and they are relevant to Counterclaimants' following claims and arguments: (1) the Bank and CDC knowingly made material misrepresentations concerning the timing and amount of state tax credit and other funding sources, (2) the Bank and CDC breached their contractual duties and the duty of good faith and fair dealing, and (3) the Bank and CDC intentionally harmed Guarantor Michael Qualizza.

The Bank and CDC have had ninety-eight (98) days to produce these documents. During that period, they have never stated that these materials are inaccessible or privileged within the meaning of Federal Rule of Civil Procedure 26(b)(1), (2)(B). The Bank and CDC's original argument against production was that Counterclaimants' requests were too broad and that they pertained to confidential business information. Counterclaimants' revised requests are intentionally narrow to avoid any undue burden or cost. FED. R. CIV. P. 26(b). Further, confidential business information is not protected from discovery, and parties have stipulated to a protective order in this matter that addresses confidential business information. (ECF Nos. 31-2, 34).

The undersigned attorneys certify that they have conferred with the Bank and CDC's

counsel about these requests during phone calls on September 22, October 15, October 20, October 28, November 3, and November 8, 2021, and by email on September 17, September 28, October 12, October 25, October 26, November 1, November 4, and November 9, 2021. The undersigned attorneys also sent a Discovery Deficiency Letter to Counterclaim Defendants on October 26, 2021, discussing these same issues and re-asserting Counterclaimants' requests for these limited, relevant, nonprivileged documents.

For the foregoing reasons, and for the reasons discussed in the accompanying Memorandum in Support of this Motion to Compel, Counterclaimants respectfully request that the Court grant this Motion to Compel and grant the following relief:

A. Order Counterclaim Defendants to produce:

1. Financial projection schedules of the CDC's other state historic tax credit deals closed in Missouri between January 1, 2017, and today;
2. The state tax credit agreements for the same deals; and
3. CDC Executive Director Zachary Boyers' communications where Counterclaimant Qualizza is named or discussed, either by his proper name, nickname, or any pseudonym.

B. Order Counterclaim Defendants to answer Counterclaimants' First Interrogatories

Seven through Ten and Thirteen through Fifteen; and

C. Award attorneys' fees and costs pursuant to Federal Rule of Civil Procedure 37(a).

Dated November 15, 2021

Respectfully submitted,

Dowd Bennett LLP

By: /s/ Matt D. Ampleman

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Attorney for Defendants Michael Qualizza,
Neil D. Freeman, and Timothy Dixon and
for Counterclaimants DFQ Management,
LLC, and 1501 Washington St. Louis, LLC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon all parties and/or counsel listed below by placing it in the United States Mail, addressed to said parties with sufficient postage to carry the same to its destination, as directed below, or electronically through the Court's ECF system on this 15th day of November, 2021.

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/s/ Matt D. Ampleman